No. 11874

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

In the Matter of

CHRIST'S CHURCH OF THE GOLDEN RULE, a California Non-Profit Religious Corporation,

Bankrupt,

PETER PETERSEN, MRS. PETER PETERSEN and GEORGE D. PATRICK,

Appellants,

vs.

PAUL W. SAMPSELL, L. BOTELER and MCINTYRE FARIES, as Trustees in Bankruptcy of the Estate of Christ's Church of the Golden Rule, Bankrupt, and CHRIST'S CHURCH OF THE GOLDEN RULE, Bankrupt,

Appellees.

APPELLANTS' OPENING BRIEF

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Statement of Jurisdiction

This is an appeal from an order of the District Court, Southern District of California, Central Division, denying the appellants' (individuals in the religious society) motion to set aside the adjudication in bankruptcy of Christ's Church of The Golden Rule, a California non-profit religious

association, the temporal agency for the religious society of the same name.

An appeal in bankruptcy is a matter of right where it does not directly involve any sum of money within the meaning of Sec. 24a. *(11 USCA 47a)*

England v. Nyhan, 9 Cir. 141 F. 2d 311

Winton Shirt Corpor., 3 Cir. 104 F 2d 777

Statement of Facts

A motion was made before the District Court by the three appellants to set aside the adjudication in bankruptcy, upon two separate and distinct grounds:

1. Jurisdiction to adjudicate the corporate temporal agency of the religious society a bankrupt; (adjudication void ab initio).

2. Abuse and perversion of the adjudication which has amounted to a violation of Freedom of Religion, First Amendment, United State Constitution, (adjudication set aside as to future acts, but not effecting validity of past acts of administration).

Under the jurisdictional point, there are several separate and distinct grounds:

1. A church corporation under California law holds property as the agent of and manages it for the interests of the ecclesiastical or spiritual body, under an express trust as though declared by deed.

In the instant case, the corporate temporal agency was more than solvent having $2,600,000 assets and $111,000 general creditors had some differences between its president (corporate official) and the state Attorney General, and as a result a receivership was sought in the State Court, and granted. The corporate president then sought to carry on the fight and differences with the State officials by filing a Chapter XI proceedings on November 1, 1945. During the hearings in the District Court, the temporal corporate officials filed a voluntary petition in bankruptcy and the adjudication was made November 18, 1945. It is contended that the corporate temporal agency could not throw the corpus of the trust into bankruptcy over a mere difference with some public official from the very nature of the religious trust without the consent of the spiritual body and without the consent of the members of the corporation.

2. It is the contention of the appellants that their religious society and its property could not be put under the control and direction of a bankruptcy court, nor could a bankruptcy court be invested with ecclesiastical jurisdiction, nor could the management of a solvent religious society's financial matters be put in the hands of two professional bankruptcy liquidators and an owner of a brewery (none of whom had any religious sympathies with the Church). Any statute that would

permit this would to that extent be unconstitutional as a violation of the First Amendment, United States Constitution, Freedom of Religion. Certainly without the consent of the religious society or of those in it, by a decree of forfeiture of the Church assets, it would be clearly unconstitutional.

3. Neither the religious society nor those in it consented to a decree of forfeiture of some $2,600,000 for a mere $111,000 of liabilities. Without this consent the officials of the corporate temporal agency could not do so by petitioning for a voluntary adjudication. No consent of the membership was ever sought or obtained at any time.

4. The testimony of the corporate president, Mr. Bell, and of his counsel Mr. Utley showed that the petition for bankruptcy proceedings was intended as a means of seeking religious freedom from a religious persecution. It also shows that the difference between a Chapter XI proceedings and a voluntary bankruptcy was believed by the temporal agency officials to be much the same. The reality of consent, the understanding of the nature of an adjudication in bankruptcy and the consequences including the forfeiture of all property of the Church free of its religious uses and the loss of some $2,600,000 of the religious society's property

to satisfy only $111,000 of debts, was wholly lacking.

The second and distinct grounds was that of the abuse and perversion of the adjudication decree by its misuse as an instrument of religious persecution. The offer of proof was made on behalf of the appellants and the District Court denied the motion upon the grounds that abuse of the court's process was not grounds for the Court to interfere by this remedy.

The facts of the religious persecution are strong, and one part of it has already been before this Court. We would like to draw the Court's attention to a prior proceeding in this Court, No. 11,472, Bell v. Sampsell, et al., and particularly to Appellant's Reply Brief therein, pages 12 to 14, where similar matters are touched upon.

The offer of proof involved the following:

(a) A rule of procedure was established in the administration of the estate known as the "White Case" wherein the religious beliefs of the society were declared and held fraudulent for want of judicial proof of the truth of the beliefs! This was a heresy trial as defined in *U. S. v. Ballard,* 322 U. S. 78. As a consequence any one who would become a "dissenter" and would renounce his or her religious beliefs would have a preferred claim in the estate, any property claimed in the estate, and

even compensation for his or her time even to attending religious instruction!

(b) It was a stated policy of the Trustees in Bankruptcy in the administration of the estate, not once but on several occasions, in clear and unmistakable language that a separate and distinct rule of both procedure and law would be applied in the same case to various individuals depending upon whether the individual would renounce the religious beliefs of the Church and disassociate with others in the religious society, or whether the party held the same religious beliefs as the others in the society. *We believe we have the strongest possible statement of a religious persecution.* If one be a "dissenter" he is entitled to such property as he may wish to claim from the estate, and help in obtaining it from the Trustees in Bankruptcy and their counsel. Upon solely the basis of religious beliefs—those who retained the religious beliefs of the Church—are termed "loyalists" and they are subjected to a religious persecution, and hailed into the Bankruptcy Court for inquisitions as to their religious beliefs, their property, their earnings and services after bankruptcy adjudication, claimed to be forfeited to the Trustees in Bankruptcy to be taken without compensation, and to be stripped of their property in the Bankruptcy Court upon no more proof than membership in the Church!

If there be any question as to the administration,

the extracts of the statements of trustees counsel appear in the record. The Referee stated the policy of the Trustees that the petitions in reclamation of those who have definitely severed their connections with the Church shall be governed by the White Case (Tr. 14, Nov. 1947, pg. 31), to which counsel for the Trustees agreed. The trustees permitted a "dissenter" to have an automobile from the bankruptcy estate without even a petition in reclamation and Mr. Hunt, counsel for the Trustees, explained the Referee applied the doctrine of the White Case because she promptly disassociated herself from the Church and all people connected with it (Tr. 14, Nov. 47, pg. 31-2). Mr. Martin, another attorney for the Trustees, stated that the White Case could not apply to the appellant Petersen as he had not withdrawn from the "ecclesiastical society"; and Judge John W. Preston who represented a Mr. Miller found that his clients could not contest title to a ranch because they had not severed connection with the Church organization by withdrawal or otherwise. (Tr. 14, Nov. 47, pgs. 29-30). Mr. Martin, attorney for the Trustee on page 30 of Tr. Nov. 14, 1947, stated that the price of Mr. Petersen's right to contest title to his own property is that he rescind his relationship with the Church.

In the combined proceedings before the District Court on 14 November 1947, involving Petersen

and Patrick and their motion now before this Court, Mr. Hunt as attorney for the Trustees in Bankruptcy made himself amply clear on the religious persecution:

1. On page 3a of Transcript of 14 Nov. 48 he stated:

> "There is nothing in the record to show that Patrick ever repudiated any of these religious beliefs. The answers do not show that he completely severed himself from the Church or that he expects to do so in the future".

2. On page 7a of Tr. 14 Nov. 48, Trustees counsel said:

> "He did not directly charge Bell or the church with fraud, but he tried to stand in the shade of the White Case, where there were different parties and different circumstances, and said, because in that case a referee held that there was fraud and the facts there showed that these parties promptly severed all connections with the church and had nothing further to do with it, yet Patrick said, "Well, because that happened in that case, I am entitled to get my property back". Now, that is the sum and substance of all this argument up here.
>
> The Court: There was nothing to prevent Patrick from saying, "I believe the doctrine of the church but I think Bell defrauded me or the church defrauded me", is there?
>
> Mr. Hunt: But he does not repudiate the doctrines. He is willing to accept them.
>
> The Court: What difference does that make?
>
> Mr. Hunt: The record shows that Patrick still believes those doctrines in spite of anything that Bell or anybody said.

The Court: What difference does that make? He could still be defrauded by Bell, could he not?

Mr. Hunt: But anybody could condone fraud, your Honor; and if fraud is committed, you are not ipso facto to get your property back. You have got to show that you have cancelled and you want to quit. But if you condone it as to any false statements and do nothing about it, you have condoned the fraud. A man can't blow hot and cold at the same time, your Honor.

The Court: Would it be your position that the man would have to quit the church in order to rescind?

Mr. Hunt: I think he would have to quit the church in order to get his property back.

The Court: Renounce the beliefs of the church?

Mr. Hunt: Yes, sir. In other words, that is the very distinction between dissenters and loyalists.

Mr. Crittenden: That is right, your Honor.

The Court: I think that is too rough a distinction, myself.

Mr. Crittenden: I do, too.

Mr. Hunt: It might be.

The Court: I do not see any inconsistency in a man saying that "I believe Bell is a scoundrel. He defrauded me. But I believe the church or the tenants of the church are sound and good and pure." Is there any legal obstacle to his saying that?

Mr. Hunt: Well, but how could he be defrauded if he believes in the beliefs of the church which Mr. Bell believes? That is the point . . ."

We believe that this shows beyond any question of doubt that a "fraud" basis is made in the White Case solely upon religious beliefs; that those who renounce the beliefs of the Church and disassociate themselves from the Church are treated as victims of fraud with the preferred position of one rescinding for fraud; that those who continue to believe the beliefs of the Church have condoned the fraud. That a distinction in the same case is made between persons depending wholly upon their *religious beliefs.*

(c) Appellants offered to prove an inquisition under Sec. 21a or 21j almost daily for the first year and a half of the administration and almost entirely of those who were loyal members of the religious society; that it was used as a basis of religious discrimination based upon religious beliefs. Prior to the motion in the District Court, appellant Petersen was the subject of a 21j inquiry as to his religious beliefs, by Mr. Hunt, attorney for the Trustees.

(d) Appellants offered to prove that summary proceedings were used, and procedure and substantive rights applied upon the basis of religious beliefs; those who adhered to the religious beliefs of the religious society had a different rule and law applied than those who departed from and renounced their religious beliefs and disassociated themselves from the religious society.

(e) Appellants offered to prove that the temporal affairs of the religious society were put into the hands of two professional bankruptcy liquidators and a man who ran a brewery; that none had any sympathy with the organization religious beliefs, and one of the counsel made derogatory remarks about the religious teachings.

(f) Appellants offered to prove an initial inventory of assets in the religious society of $2,600,000 at bankruptcy; that up to the middle of 1947 the administration in bankruptcy showed cash expenditures of $2,207,936.38; that up to the middle of 1947 costs of administration, attorneys fees, salaries and overhead of the administration was $266,089.09; and the value of the estate had wasted to approximately $661,000 of value; that the actual allowed claims of general creditors is $111,364.79 and not one cent has ever been paid in dividends, nor is there any indication that it will be paid until the trustees are through with their handling of tax matters; that a claim of $900,000 of Federal taxes was suggested to be settled by General Counsel of the Treasury for $125,000 and finally settled for $130,000 plus interest; despite the fact that no bona fide effort was ever made by the Trustees in Bankruptcy to bring the Church corporation within Sec. 101(6) or 101(18), an apostolic religious society; and no effort to fight the state tax claim in two years, of the administration of the estate.

(g) Appellants offered to prove that the trustees in bankruptcy solicited donations from the various people in the religious society upon the threat of both the Trustees and the Referee (the Bankruptcy Court) to close up the church lock, stock and barrel, and disburse the religious society if services and gifts were not donated. That all services and income of those in the religious society were claimed as forfeit to the Trustees in Bankruptcy *without compensation* from after bankruptcy adjudication in November 1945 to and including the end of September 1946; to be grabbed and seized by the bankruptcy court and interrogated the individuals under Sec. 21a and 21j of the Bankruptcy Act. The Trustees in Bankruptcy ran the financial matters of the religious society including the religious seminary, collected money and services of the members of the apostolic religious society after bankruptcy. Donations from those in the religious society were sometimes sent in with written directions that they be used for certain religious purposes of the religious society.

(h) Appellants offered to prove that the Trustees in Bankruptcy hired two or three private detectives who went through and searched the personal effects and private papers of individuals in the religious society, took and seized such papers and property of these persons. That the only authority for these acts was a subpoena duces tecum,

without affidavit, for a hearing never held. Religious publications, including religious literature published after November 1945 as late as Christmas time 1946 were seized and the Trustees in Bankruptcy prevented distribution of the literature of the religious society.

The Statement of Points of Appeal are:

1. A continued course of conduct denying and infringing Appellant's rights of religious freedom, First Amendment, United States Constitution, in the administration of the estate in bankruptcy is proper grounds for termination of further administration and further misuse and abuse of the Court's processes; and the District Court erred in refusing to consider any such conduct, abuse and misuse of the Court's process for termination of further religious persecution.

2. The bankrupt was a solvent temporal agency of a religious society at the time of adjudication in bankruptcy, and held its property upon a religious trust for the ecclesiastical and religious society; and an adjudication of the trustee of the religious trust should not effect the religious trust, nor is the corporate temporal agency by itself a proper subject of adjudication in bankruptcy.

3. That the Directors of the corporate temporal agency for the ecclesiastical and religious society had no authority to file a voluntary petition in bankruptcy; and there was no evidence nor show-

ing they did, either as directors, or by the ecclesiastical church government, or with any consent of any membership.

4. That there was no reality of consent by the president of the corporate temporal agency, in that he did not understand the nature and character of the proceedings in bankruptcy.

5. That the adjudication in Bankruptcy is being used as an instrument of religious persecution in violation of the First Amendment, United States Constitution;

6. Findings of the District Court as to the reality of consent of the president of the corporate temporal agency is not supported by the evidence before the Court.

I.

A Religious Society Under the Laws of California Holds Its Property by a Temporal Agency in Trust for the Ecclesiastical Body With Power to Control and Manage in the Interests of the Spiritual Ends of the Church, and the Temporal Agency Is a Subordinate Factor in the Life and Purposes of a Church.

The decisions of both California and the Supreme Court of the United States hold that a church corporation holds its property under a trust for the ecclesiastical body.

Wheelock v. First Presbyterian Church, 119 Cal. 477, 51 P. 841, from which we quote:

"The spiritual or ecclesiastical body being

dissolved, what becomes of the money held by the corporation? This question brings before us the consideration of the status of the corporation as relating to the church proper. The Civil Code of this state (original section 595) expressly permits religious bodies to incorporate; but such incorporation is only permitted as a convenience to assist in the conduct of the temporalties of the church. Notwithstanding incorporation, the ecclesiastical body is still all important. The corporation is a subordinate factor in the life and purposes of the church itself. A religious corporation like the one at bar, under the laws of this state, is something peculiar to itself. Its function and object is to stand in the capacity of an agent holding the title to the property, with power to manage and control the same in accordance with the interest of the spiritual ends of the church. It is said in Winebrenner v. Colder, 43 Pa. St. 249: 'The legislature never means, by granting or allowing such charters, to change the ecclesiastical status of the congregation, but only to afford them a more advantageous civil status. The directors or trustees of the corporation, as such, have no authority whatever over church affairs. These matters rest purely with the ecclesiastical body. Whatever property stands in its name is seized to the use of the church proper. It is a trustee holding property for the use and enjoyment of the church and every member of the church is a beneficiacy of that trust.' 'By the election which organized the corporation, the title became vested in the trustees and their successors, for the use of the trust, as completely as if the use had been declared by deed. * * * A trust of this character is not distinguishable in this from any other trust over which courts of

equity exercise a supervisory power.' Brunnenmeyer v. Buhre, 32 Ill. 190."

The Supreme Court of the United States has held that a religious society's property is held under a *trust* for the doctrines of the Church, society, or organization.

Watson v. Jones, 80 U. S. (13 Wall) 679, 20, L.Ed. 666

The Supreme Court of California in *Baker v. Ducker,* 79 Cal. 365, 21 P. 764, held that property acquired by a religious society and held by its church corporation was held under a *trust;* and the parsonage obtained by contributions could not be diverted to other uses even though by a majority of the members.

The Supreme Court of California in *Permanent Com. of Missions vs. Pacific S. Presbyterian Church,* 157 Cal. 105, 106, P. 395, recognize that a church corporation holds its property under a religious trust. The Court cited *Watson v. Jones,* 80 U. S. 726, 20 L.Ed. 666, in support of this proposition as well as cited *Watson v. Jones* in the *Baker v. Ducker,* 79 Cal. 365, 21 P. 764 for a similar proposition.

It was said in *Bomar v. Mt. Olive Missionary Baptist Church,* 92 Cal. App. 618, 268 P. 665:

"While not cited as determinative of any questions involved herein, we think the following taken from the opinion of the court in

Wheelock v. First Presbyterian Church, 119 Cal. 477, 51 P. 841, pertinent:

> "Notwithstanding incorporation, the ecclesiastical body is still all-important. The corporation is a subordinate factor in the life and purposes of the church proper."

> "In any event, as held in that case, the corporation would be only the agent or instrument for holding title to property and managing its temporal affairs. The ecclesiastical body would still remain the real church. Under the circumstances disclosed, we think, in the present case, the unincorporated religious association known as the Mt. Olive Missionary Baptist Church at all times constituted the body entitled to control both its ecclesiastical and temporal affairs, and that the incorporation never acquired any legal or ecclesiastical right to the control of either of them."

It is the established law of California:

1. That a church corporation organized under the laws of California is something peculiar unto itself.

2. Incorporation is permitted only as a convenience in the temporalties; and incorporation does not effect the religious body which remains all important;

3. The function and object of a church corporation is to hold and manage property in accordance with the interest of the spiritual ends of the church.

4. Whatever property a Church corporation holds, it holds subject to a trust for the use and

enjoyment of the Church and every member of the Church is a beneficiary of the trust.

5. A Church corporation holds all its property subject to a trust as if declared by a deed. This trust is not distinguishable from any other trust supervised by the courts of equity.

The trustees in bankruptcy do not acquire title to property, the legal title to which is in the bankrupt as trustee; the trustees in bankruptcy are not entitled to property in the possession of the bankrupt which is held under an implied trust, or to which a constructive trust attaches.

8 C. J. S. 653, Bankruptcy Sec. 193d
In re Finkelstein, 2 Cir., 33 F. 2d 278
I re Interstate Pipe Co., 15 F. 2d 61
Guarantee B. & Mtg. Co. v. Hilding, 6 Cir. 290 F. 22

In re Heintzelman Const. Co., 34 F. Supp 109, the Court said:

> "Property impressed with a trust continued so impressed in the hands of the trustee. Whatever title he took was subject to the valid claims and equities which might have been asserted against the bankrupt. In re Branon, 5 Cir., 62 F. 2d 959; Martin v. New York Life Co., 7 Cir., 104 F. 2d 573; Union Trust Co. v. Townshend, 4 Cir., 101 F. 2d 903; Hurley v. Atchinson, Topeka & Santa Fe Ry., 213 U. S. 126, 29 S. Ct. 466; 53 L. Ed. 729; Zartman v. First National Bank, 216 U. S. 134, 30 S. Ct. 368, 54 L. Ed. 418."

Despite this well established rule of law, the

Trustees in Bankruptcy and the Bankruptcy Court have seized and taken the trust property, in total disregard of the trust, and conducted the religious persecution.

In view of the well established law of church corporations, no temporal agency can petition for Chapter XI, nor for voluntary bankruptcy without the consent of the beneficiaries of the religious trust—the ecclesiastical body and the persons who are members of that ecclesiastical body. Certainly they cannot by a voluntary petition in bankruptcy institute a decree of forfeiture of some $2,600,000 of property for debts of $111,000 merely hoping to escape a religious persecution (but they got into a worse one) or merely because of a dispute between the temporal agency's president and some state official.

The decree of adjudication is a decree of forfeiture of all property of the bankrupt.

> *1 Cooley's Blacktone* (3rd Ed.) pg. 492 (Vol. II, pg. 283)

Certainly, no temporal agency who is solvent, not embarrassed by debt, but only seeking "protection" of the Federal Courts as the testimony of both Mr. Utley and Mr. Bell show in the transcript can without the consent of the spiritual body or any person or persons in it, convey over two and a half million dollars of property held under a religious trust by any means—by transfer or a voluntary decree of forfeiture.

II.

The Court Will Not Permit Its Processes or Judgment of Adjudication in Bankruptcy to be Misused.

The record shows an exceedingly strong set of facts of a misuse, abuse and perversion of the Court's processes and judgment of adjudication in a religious persecution without precedent in the reported decisions of American Jurisprudence:

1. A *heresy trial* (as the term is used in *U. S. v. Ballard,* 322 U. S. 78) based upon religious beliefs; jurisdiction arises from the adjudication in bankruptcy.

2. Two professional liquidators and an operator of a brewery, none who hold comparable religious sympathies were put in charge of and ran a Church with its seminary, etc., for almost a year after the adjudication, solely upon and by color of the adjudication.

3. A course of conduct of extensive inquisitions under Sec. 21a of the Bankruptcy Act were held over a year and a half period aimed against these remaining loyal to the beliefs of their religion. Bankruptcy law permits a broad inquisition, copied after the famous Roman jurisprudence, (and used in the famous Spanish Inquisition) concerning any acts, conduct or property of the bankrupt. The sky is the limit in this inquisition. Adjudication in bankruptcy is the basis for judicial process to be used for these inquisitions.

4. A course of conduct of suppression of the religious literature its seizure and effective throttling. Again the adjudication is the right upon which claim is made to all religious literature whether composed or published before or after the adjudication.

5. A course of conduct of searches and seizure, without color or right of the personal papers of those belonging to the religious society. A double outrage both of an unlawful searches and seizure and of unlawful suppression of religious literature, only possible by reason of the adjudication.

6. Heresy trial of the beliefs of the religious society, determination of church membership, and exercise by summary jurisdiction of forfeiture of property for religious beliefs and affiliations. All based upon and stemming from the adjudication in bankruptcy.

7. A course of conduct of running a church, claiming all money and property and services of those having religious beliefs and church affiliations; all based upon the adjudication.

8. A course of conduct of embroiling the estate in tax litigation, and failure to make any bona fide attempt to wind up the litigation or plead tax laws applicable—Sec. 101(6) and 101(18). Adjudication gives the trustees in bankruptcy the sole control and conduct of all these matters and litigation, and the bankruptcy court jurisdiction.

9. An administration of over two and a half million dollars of the Lord's purse, with enormous administrative expenses, and not one cent paid as a dividend to general creditors. It is the adjudication which is the decree of forfeiture of this property and the authority for this outrageous and scandalous conduct.

10. A course of conduct where different rules of substantive law and procedure are applied based upon the religious beliefs of the parties in the same litigation; not by one counsel but by two; not on one occasion but by two. The adjudication is the basis for the exercise of this ecclesiastical jurisdiction by the referee in bankruptcy.

The Court will not permit its powers to be exercised in the aid of a fraud, or for improper purposes.

> *Zeitinger v. Hargadine McKittrick Dry Goods Co.,* 8 Cir., 244 F. 719

The Zeitinger Case rule was quoted with approval by the Ninth Circuit in *Mount Vernon Hotel Co. v. Block,* 157 F. 2d 637, in which the Court quoted:

> "* * * we further realize that 'the District Judge, in adjudicating upon a voluntary petition in bankruptcy, is not a ministerial, but a judicial, officer, whose first duty is to see that those who minister in the temple of justice shall not invoke his authority for the accom-

plishment of a fraud,' Zeitinger v. Hargadine-McKittrick Dry Goods Co., 8 Cir. 244 F. 719."

The bankrupt court may under certain circumstances refuse to assume or retain jurisdiction where it appears the court is being used in connection with improper purposes.

Smith v. Chase Nat. Bank of City of N. Y., 8 Cir. 84 F. 2d 608

The Ninth Circuit in *In re Fox West Coast Theatres,* 88 F. 2d 212, indicated that a bankruptcy adjudication could be set aside as to future or prospective matters. In the opinion of the Court it was indicated that the remedy was proper where the bankrupt had not authorized the petition, or where the Court had no jurisdiction, or to prohibit a fraudulent party from reaping the fruits of a fraudulent judgment. Misuse of the court's adjudication does not effect jursidiction, but merely goes to further proceedings.

Under the instant case, the "loyal" persons in the religious society, under the advice of their counsel Judge John W. Preston, would be in a position to pay all just debts; the persecution would be stopped, and the adjudication declared naught. There is no indication, after more than two years of the type of conduct the record shows, that if the present adjudication is permitted to stand, the general creditors will ever receive anything. Certainly out of $2,200,000 of cash dis-

bursed in a year and a half of administration, not one cent was paid to tax claimants or to general creditors; and there is no prospect of any dividend being paid. Certainly in the interest of creditors, no argument can be propounded to uphold the adjudication. Certainly in the interest of religious freedom or administration of justice can no argument be propounded for the adjudication.

In granting a motion to set aside an adjudication in bankruptcy the 7th Circuit said in *In re Gareau,* 127 F. 677:

> "But aside from that, it would be the duty of the court sua sponte, when it is led to believe that its jurisdiction has been imposed upon, to inquire into the facts by some appropriate form of proceedings, and for its own protection against fraud or imposition, to act as justice may require."

The Second Circuit in *In re Ettinger,* 76 F. 2d 741, in upholding an order setting aside an adjudication in bankruptcy held that when the court believes its jurisdiction has been imposed upon, it can act sua sponte on its own motion, or any interested person.

It was held in *In re E. C. Denton Stores Inc.* (DC-Ohio) 5 F. Supp. 307, that the adjudication in bankruptcy was judicial and not a ministerial act, and it was the court's duty to see those who minister the temple of justice shall not invoke

it to accomplish a fraud; and vacated the adjudication.

In *In re Associated Oil Co.* (DC-La) 271 F. 788, it was held that the bankruptcy court would not permit its agency to be misused and annulled the adjudication.

Even if there were jurisdiction, and the temporal agency could submit its property to a decree of forfeiture without the consent of the spiritual body or those in it:

(a) The court cannot sit idly by and permit its temple to be misused in a religious persecution, particularly of the kind shown in this record.

(b) If there ever were anything that would appeal to the conscience of the Chancellor it would be the cry of help of the persecuted in a religious persecution shown in this record, from the harsh heel of the bankruptcy gang.

(c) The Court can act sua sponte, of its own motion, to prevent such misuse of its temple.

(d) The Court can annul the adjudication to prevent any future misconduct or misuse of its process; and save the persecuted from further torments on the rack of the inquisition, stop further exercise of ecclesiastical jurisdiction by the bankruptcy referee, stop further squandering of money of the Lord's Purse by the professional liquidators in bankruptcy in the conduct of the religious per-

secution, save those who adhere to beliefs of their own choosing from being stripped in bankrutcy summary proceedings, save some vestige to the meaning of religious freedom in this nation. The Court is not powerless. It can act sua sponte upon the facts in the record if for any reason the present remedy does not appeal to the chancellor.

III.

There Was No Jurisdiction to Adjudicate the Temporal Agency a Bankrupt.

1. A temporal agency—particularly a California church corporation—holds its property under a trust for the benefit of the spiritual body and those in it. This has been covered in detail. A trustee in bankruptcy does not take title or possession to any property held by the bankrupt under a trust, express, implied or resulting or constructive for another. From its very nature, it could not be adjudicated a bankrupt. Certainly under the Constitutional guarantee of religious freedom, the ecclesiastical society cannot be adjudicated a bankrupt. Nor could the individuals in a religious society be adjudicated bankrupts upon the petition of any other individual or person, solely by reason of religious affiliations.

2. A temporal agency—particularly a California church corporation—is subservient to the ecclesiastical body and organization, and it but acts for the spiritual body in temporal matters. It exists as

a convenience in temporal matters. Certainly, while solvent it cannot by any voluntary act—by deed or decree of forfeiture—surrender $2,600,000 of assets in its trust for $111,000 of general creditors. Any trustee who should do so, would be held to have acted beyond the power of the trust and the act upon its face so shocking to any court as to treat it as a nullity. Certainly without the express consent of the beneficiaries of the trust, any transfer would but at most pass bare legal title and the party taking it would take with notice as effective as though the trust were created by deed. Certainly without the express consent of the true owners, the spiritual body and those in it, no attempted conveyance whether by deed or by decree of forfeiture would be valid. Any attempt of the corporate temporal agency by its president or by its board or both to confer jurisdiction for a decree of forfeiture of some $2,600,000 of property for some $111,000 of debts is so shocking and beyond their powers as to be void upon its face. Certainly when it appears this was done in an attempt to avoid a religious persecution, only to jump from the frying pan into the fire, and upon a mistaken belief as to the nature and character of a bankruptcy adjudication, and a mistaken belief that bankruptcy had any consideration for the bankrupt or for any religious society or that bankruptcy would be conducted other than according to its reputation

among the practicing bar or the general public; and done by the President of the temporal agency in personal differences he was having with some state official, no one can contend that jurisdiction was conferred for such an adjudication—a decree of forfeiture. No agent could have this authority. Certainly no temporal agency for a religious society under the California decisions has such authority. Under *Baker v. Ducker,* 79 Cal. 365, 21 P. 764, a religious corporation could not use a house and lot acquired for a parsonage for other uses, even if consented to by a majority of the members.

A president of a commercial corporation cannot file a voluntary petition in bankruptcy without the consent of the corporation.

In re Community Book Co. (DC-Minn) 10 F. 2d 616

In re So. Steel Co. (DC-Ala) 169 F. 702

Regal Cleaners & Dyers v. Merlis, 2 Cir., 274 F. 915

In re Jefferson Casket Co. (DC-NY) 182 F. 689

It is the Ninth Circuit rule that where there is a restrictive statute in the state requiring stockholders to consent to a transfer of all of the assets, that a voluntary petition in bankruptcy must be made by the officials of the corporation with a duly authorized resolution of the board of directors authorizing the acts, and a majority of the stock-

holders of the commercial corporation must consent in writing.

Rudebeck v. Sanderson, 9 Cir. 227 Fed. 575

In re Crystal Ice & Fuel Co. (DC-Mont) 283 F. 1007, it was said:

> "It is settled law in this circuit that in view of statutes like those of this state of the company's incorporation, power to express this willingness (to be adjudicated bankrupt) is with the stockholders, and not with the directors. See in re Quartz Gold Mining Co. (DC-Ore) 157 F. 243, affirmed in Van Eamon v. Veal (1908) 158 F. 1022, 85 CAA 547; Bell v. Blessing (Cal. 1915) 225 F. 750, 141 CAA 34, Rudebeck v. Sanderson (Wash. 1915) 227 F. F. 575, 142 CAA 207."

And where it does not appear that the by-laws were followed in calling a stockholders' meeting, the adjudication in bankruptcy by a voluntary petition was vacated.

In re Campbell County Hardware Co., 15 F. 2d 78

And where the stockholders meeting was held without notice, the voluntary petition in bankruptcy was void and the adjudication vacated; and although stockholders can ratify acts of corporate officials, they cannot ratify and make valid an adjudication on an invalid petition.

In re Mississippi Valley Util. Corpor., 2 F. Supp. 995

A non-profit corporation is governed in such mat-

ters by the general corporation laws in the code.

CC 605d (California law in November 1945) Now Corpor. Code 9002

General corporation law in effect in California in November, 1945, prohibited transfer of all of the assets of a corporation without the written consent of the stockholders.

CC 343, formerly 361a; now Corporation Code, Sec. 3901-2

This law, when numbered CC 361a was construed to prohibit and make *void* a sale by a corporation of all its assets where there was *no proof* of a consent by the shareholders.

Porter v. Anglo & London Paris Bank, 36 Cal. App. 191, 171 P. 845, in which it was said; quoting from *So. Pasadena v. Pasadena. Etc. Co.,* 152 Cal. 581, 93 P. 490:

> "This enactment (CC 361a) is not, on its face, a mere negative or prohibitive statute, forbidding that which before was permitted. It is both affirmative and negative in its terms. * * * It expresses a consent to such transfer in the manner prescribed, as well as prohibition against such transfer in any other mode. * * * It provides ordinary business corporations of the power they previously possessed to dispose of their entire property, franchises, and business, as a whole at the will of a mere majority of the stockholders, or of less than two-thirds of them * * * "
>
> "In the absence of a showing that such a

> sale was consummated in conformity with the statutory requirements, the trial court correctly concluded it was void as against the plaintiff * * * ''

In the instant case the record shows that there was never any consent of any members of any kind at any time to the filing of any proceedings in bankruptcy, either the original Chapter XI or the voluntary petition.

Where it appears that there is no jurisdiction, it is the duty of the Court to go no further, but to dismiss the adjudication and proceedings.

> *Morris v. Gilmer,* 129 U. S. 315, 9 S. Ct. 293, 32 L. Ed. 690

Where there is no jurisdiction to adjudicate a bankrupt, the Court may act sua sponte and dismiss the action over which it has no jurisdiction. Jurisdiction can be raised at any time during litigation.

> *Finn v. Carolina Portland Cement Co.,* 5 Cir. 232 F. 815

If drawn to the court's attention, that the adjudication in bankruptcy is a nullity, the court is bound to protect its jurisdiction on its own motion, and vacate the adjudication.

> *In re Vassar Foundry Co.,* 293 F. 248

The bankrupt cannot waive the jurisdiction of the court, and thus give jurisdiction where there is none.

> *In re Amer. & British Mfg. Corpor.,* 300 F. 839

It is the duty of the court to determine for itself if it has jurisdiction, for neither consent, waiver nor estoppel can give jurisdiction or permit it to proceed.

> *Woolsey v. Security Trust Co.,* 5 Cir. 74 F. 2d, 334

The Supreme Court of the United States in *Valley v. Northern F. & M. Ins. Co.,* 254 U. S. 348, 41 S. Ct. 116, 65 L. Ed. 297, set aside an adjudication in bankruptcy 17 months after the adjudication upon motion of the bankrupt, even where the bankrupt's officials aided the court and trustees in the administration of the estate. The court held there was no estoppel. In that case it was held:

> "Courts are constituted by authority, and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as a nullity. They are not voidable, but simply void, and this even prior to reversal."

We believe the record amply supports any one of the following grounds as determinative by itself irrespective of any other that there was no jurisdiction:

1. There was no reality of consent by the Presi-

dent of the temporal agency, to place the temporal agency of the Church into bankruptcy.

2. There was no consent by the spiritual body or any of its members to the temporal agency, a solvent trustee of a solvent trust, to any adjudication in bankruptcy.

3. There was no consent by any members of any kind to the alleged acts of bankruptcy and the filing of the voluntary petition.

4. A temporal agency—a California church corporation—by its very nature is not the proper subject of an adjudication in bankruptcy. Certainly not with $2,600,000 assets, and $111,000 of general creditors.

5. Religious liberty and the Constitutional guarantee of the First Amendment is such that no bankruptcy court should undertake to administer a church. In the reported cases, although we have searched diligently, we can find no decision or written reference to nor any rumor of any church heretofore being adjudicated a bankrupt or of any bankruptcy court undertaking any matter with or concerning any church. We trust this honorable Court will by its decision prevent a repetition of this horrible persecution, perversion of the court's processes and scandalous administration, that no other Church may have to bear such suffering nor any other religious group such indignities.

IV

The First Amendment, Freedom of Religion, Is the Highest of the Personal Rights Guaranteed by the Bill of Rights, and the Judicial Arm of the Government Through the Bankruptcy Courts Cannot Violate This Right of Religious Freedom.

The United States Supreme Court in the recent Land Covenant Cases has held that the judicial arm of the government cannot be invoked to transcend any of the individual personal rights guaranteed and established by the Constitutional Bill of Rights.

> *Hurd v. Hodge* (May 3, 1948) 92 L. Ed. (Adv. Sheets) 857, 68 S. Ct. (Adv. Sheets) 847
>
> *Shelly v. Kraemer,* 68 S. Ct. (Adv. Sheets) 836, 92 L. Ed. (Adv. Sheets) 847

It was said in *Everson v. Bd. of Edu. of Ewing,* Tp. 67 S. Ct. 504:

> "The 'establishment of religion' clause of the First Amendment means at least this: * * * Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and visa versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between the Church and State' * * * "

The Supreme Court in holding that religious freedom transcends the right of the state to require

its citizens to actively bear arms said in *Girouard v. U. S.,* 328 U. S. 61, 66 S. Ct. 826, 90 L. Ed. 1084:

> "The victory of freedom of thought recorded in our Bill of Rights recognizes that in the domain of conscience there is a moral power higher than the state. Throughout the ages men have suffered death rather than subordinate their allegience to God to the authority of the State. Freedom of religion guaranteed by the First Amendment is the product of that struggle. As we recently stated in United States v. Ballard, 322 U. S. 78, 86, 88 L. Ed. 1148, 1154, 64 S. Ct. 882, 'Freedom of thought, which includes freedom of religious beliefs, is basic in the society of free men. West Virginia State Board of Edu. v. Barnette 319 U. S. 624, 87 L. Ed. 1628, 147 ALR 674.' The test oath is abhorrent to our tradition."

The Supreme Court said in *U. S. v. Ballard,* 322 U. S. 78, 64 S. Ct. 882, 88 L. Ed. 1148:

> "But on whichever basis that court rested its action, we do not agree that the truth or verity of respondents' religious doctrines or beliefs should have been submitted to the jury. Whatever this particular indictment might require, the First Amendment precludes such a course, as the United States seems to concede. 'The law knows no heresy, and it is committed to the support of no dogma, the establishment of no sect.' Watson v. Jones, 13 Wall 679, 728, 20 L. Ed. 666, 676. The First Amendment has a dual aspect. It not only 'forestals compulsion by law of the acceptance of any creed or practice of any form of worship' but also 'safeguards the free exercise of the chosen form of religion.' Cantwell v. Connecticut, 310 U. S.

296, 84 L. Ed. 1213, 1217, 60 S. Ct. 900, 128 ALR 1352. 'Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute, but in the nature of things, the second cannot be.' Id. 310 U. S. pp. 303, 304, 84 L. Ed. 1217, 1218, 60 S. Ct. 900, 128 ALR 1352. Freedom of thought, which includes freedom of religious belief, is basic in the society of free men. West Virginia State Board of Educ. v. Barnette, 319 U. S. 624, 87 L. Ed. 1628, 63 S. Ct. 1178, 147 ALR 647. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to the followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They cannot be put to proof of their religious doctrines or beliefs.'

"The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position. Mur-

> dock v. Pennsylvania, 319 U. S. 105, 87 L. Ed. 1292, 63 S. Ct. 870, 891, 146 ALR 81. As stated in Davis v. Beason, 133 U. S. 333, 342, 33 L. Ed. 637, 639, 10 S. Ct. 299 'With man's relation to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure peace and prosperity, and the morals of its people, are not interfered with.''

The Supreme Court in *Watson v Jones,* 80 US 679, 20 L. Ed. 666, recognized that the basic heritages of religious freedom of this nation prevented the secular courts from inquiring into or adjudicating upon any ecclesiastical or religious matters; stated the English rule to the contrary, but refused to follow it because of freedom of religion.

The Constitutional Bill of Rights including Freedom of Religion precludes the adjudication in bankruptcy of any religious society. Any statute that would sanction or permit such a judicial interference with religious liberty is to that extent unconstitutional. Any statute, law or custom that would permit two professional bankruptcy liquidators and a brewery operator with no religious sympathies for the Church at bar to meddle, touch or concern themselves with the religious society is clearly unconstitutional. Any statute that would permit the judicial arm of the Federal Government, through its bankruptcy court, to transcend

the rights of religious liberty is to that extent unconstitutional. Any acts of the Federal Government, whether through the judiciary or its officers known as Trustees in Bankruptcy that would participate in the affairs of Christ's Church of The Golden Rule, would to that extent be unconstitutional. Any adjudication that would justify or permit inquisitions as to acts or conduct of the religious society is to that extent unconstitutional, and certainly any inquiry as to religious affiliations or beliefs are clearly a persecution, for no judicial body can inquire of any persons religious beliefs or church affiliations. The very nature of bankruptcy and its administration and its inquisitorial powers are such that any religious organization, that could be adjudicated a bankrupt can be persecuted, crushed and destroyed as the case in bar shows.

The record shows by statements of counsel for the Trustees the extent to which the administration had degenerated. A heresy trial was held and for want of judicial proof of the truth of or falsity of certain religious beliefs, they were held fraudulent. The instrument of the inquisition and persecution was forged. It was and is now being applied by those who would renounce their Church and this beliefs as fraudulent would have the right to rescind and withdraw from the society and as a consequence would have the help of the Referee, the Trustees and their counsel to any property and

any claim, even for their time in attending religious instructions! Those who would not renounce their Church and religious beliefs as fraudulent and promptly dissassociate themselves from the religious society would have a different rule of law, substantive and procedure, applied. The Bankruptcy court would openly inquire and determine their religious beliefs and church affiliations. Summary proceedings in bankruptcy is the scene of this shameful proceedings. Upon proof of religious beliefs and affiliations, the unfortunate would be stripped of his property! If he objected, pressure shown in the record would be used. He had not renounced his religious beliefs, and thus he could not contest title to his own property, and would be enjoined from taking his own earnings from his own business pending the litigation! The record shows this clearly!

A religious society with our concepts of religious liberty just does not mix with bankruptcy proceedings calculated to deal with possibly dishonest debtors attempting to conceal property.

The trustees in bankruptcy, from the Lord's Purse which they have seized, undertake and finance the persecution. They hire full time paid keepers to impound literature of the religious society and prevent its circulation. How much stronger these facts are than *Cantwell v St. of Conn.,* 310 US 296, 60 S. Ct. 900, 84 L. Ed. 1213 and *Tucker v St. of Tex.* 326 US 517, 66 S. Ct.

274, 90 L. Ed. 274. The Trustees in Bankruptcy with the Lord's Purse they seized, hired paid detectives to search and seize the private papers in the possession of those in the religious society. A more ghastly act would be hard to imagine. It becomes not only inconvenient and costly to hold the beliefs—for the property and earnings of the believers (loyalists) are seized—but they cannot safely even study and read their own religious society's current publications for fear of an unlawful entry and a ransacking and seizure of their personal papers!

This is just not the misconduct of a few individuals, it is the results of a religious society falling into the clutches of the harsh hand and severe practices of the bankruptcy court. A competent trustee, Mr. Faries, was eventually the successor in office of the brewery owner. He tried to intercede as the record shows, but his able efforts came to naught to prevent further persecutions. From the nature of things, religious liberty cannot exist if a Bankruptcy Court with its powers and authority and practices gets its clutches upon a church.

No court under our Constitutional Bill of Rights can exercise ecclesiastical jurisdiction. Yet that is just what a bankruptcy court does exercise when it undertakes to administer the affairs of a religious society.

No person can by laches lose his or her right to religious liberty by not immediately defending an

invasion of one's personal liberties, but waits until the persecution becomes unbearable and evidence to prove the persecution is conclusive beyond a doubt.

No Trustee in Bankruptcy can obtain a perscriptive right to continue a religious persecution through the judicial arm of the Federal Government. Yet that is the very ground urged in the answer to the motion of the oppressed when asking for protection of their rights of religious liberty, First Amendment, and the protection of their Church. As if jurisdiction that never existed could be conferred by estopped or laches! As if property rights acquired with full notice of the rights of appellants were superior to freedom of religion, an individual personal right guaranteed by the Constitutional Bill of Rights. *Hurd v Hodge,* 92 L. Ed. 857, 68 S. Ct. 847. Freedom of religion is the highest and the most favored, and the most jealously guarded of the constitutional rights. No one who has given of his time in war in the services of his country and has learned the relative values of things to personal rights could conceive that money or property could be weighed in the same scales with personal rights, particularly those guaranteed in the Constitutional Bill of Rights. The Supreme Court of the United States has held that they cannot.

We believe that the instant record shows the strongest possible violation of religious liberty

guaranteed under the United States Constitution:

1. An adjudication in bankruptcy of a Church.

2. Exercise of ecclesiastical jurisdiction by a Bankruptcy Court.

3. Condemnation and persecution of a whole society for heresy.

4. Continued religious inquisitions not heretofore equalled by precedent in this nation.

5. Seizure and conduct of a religious society by outsiders not in sympathy, and a course of conduct of solicitation of donations after bankruptcy, and running of the temporal affairs of the Church.

6. Unlawful search and seizure of individuals because of religious beliefs of their religious literature.

7. Unlawful seizure of religious literature and prevention of its use or circulation; a suppression of freedom of press.

8. Dissipation of not small sums, but over two million dollars of cash from the Lord's Purse, in the first year and a half of administration; no payment on any general creditor's claim; over a quarter of a million dollars for overhead of administration, attorney fees, etc. for the unprecedented persecution, in but the first year and a half of administration.

9. Application of substantive and procedural rights depending upon religious beliefs and willingness to dissassociate oneself from a religious society.

10. The misuse, abuse and perversion of the judicial arm of the Government.

We defy any person to show a record of violations of Freedom of Religion in any reported case to equal these.

The appellants are not without remedy. They ask the Court to cut the Gordian Knot—to set aside the adjudication in bankruptcy and to restore to them their Church and to protect them from further religious persecution.

Conclusions.

1. A religious society under California law holds its property through a temporal agency, under a trust as though declared by deed, and not distinguishable from any other trusts known to equity.

2. A corporate temporal agency is subservient to and assists the religious society in temporal matters; holds property under a trust for the benefit of the religious society and those in it.

3. Trustees in bankruptcy do not take property held by a bankrupt under a trust, nor have any right to possession of it.

4. A corporate temporal agency cannot transfer $2,600,000 of trust assets for $111,000 debts.

5. A corporate temporal agency cannot dispose of about $2,500,000 of assets over the debts, by a decree of forfeiture.

6. A corporate temporal agency cannot do such acts certainly without the consent of the religious

society or those in it, if it could remove property from the religious trust to other uses.

7. A California corporation that is solvent cannot transfer all of its assets, by conveyance or decree of forfeiture, without the written consent of its stockholders, and if a membership corporation without the written consent of its members.

8. By the very nature of a religious society, and freedom of religion, it cannot be adjudicated a bankrupt.

9. If a church could be adjudicated a bankrupt, the Court can act sua sponte, of its own motion, to prevent misuse of its temple, particularly a religious persecution.

10. The strongest possible religious persecution has been shown which the Court can prevent. It cannot sit idly by when such an outrageous conduct has come to its attention in this religious persecution. The persecuted humbly plead for the Court's protection, and the Court is not powerless.

11. The judicial power of the United States cannot be used to transcend the highest of the personal liberties—religious freedom—guaranteed by the Constitutional Bill of Rights, and we trust this Court will not tolerate the judicial power to be so perverted, misused and abused.

We ask the Circuit Court of Appeals for the protection of the highest of civil rights, a cornerstone of personal liberty—Religious Liberty. We ask the Circuit Court of Appeals for the applica-

tion of the United States Constitution, First Amendment to save the appellants' Church from the treatment of liquidation, administration, and disbursion by the Bankruptcy Court, and the appellants from the religious persecution shown in this record.

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